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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 8th December, 2014:—

BILL NO. 182 OF 2014

A Bill to amend the Payment and Settlement Systems Act, 2007.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment and Settlement Systems (Amendment) Act, 2014.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act, and any reference to the commencement in any such provision of this Act shall be construed as a reference to the commencement of that provision.

Amendment
of section 2.

2. In section 2 of the Payment and Settlement Systems Act, 2007 (hereinafter referred to as the principal Act),—

51 of 2007.

(i) after clause (d), the following clauses shall be inserted, namely:—

‘(da) “issuer” means a person who issues a legal entity identifier or such other unique identification (by whatever name called), as may be specified by the Reserve Bank from time to time;

(db) “legal entity identifier” means a unique identity code assigned to a person by an issuer for the purpose of identifying that person in such derivatives or financial transactions, as may be specified by the Reserve Bank from time to time;’;

(ii) after clause (q), the following clause shall be inserted, namely:—

‘(r) “trade repository” means a person who is engaged in the business of collecting, collating, storing, maintaining, processing or disseminating electronic records or data relating to such derivatives or financial transactions, as may be specified by the Reserve Bank from time to time.’.

Amendment
of section 23.

3. In section 23 of the principal Act,—

(i) in sub-section (1), after the words “to a payment system” occurring at the end, the words “under section 7, or, such gross or netting procedure as may be approved by it under any other provisions of this Act.” shall be inserted;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Where, by an order of a court, Tribunal or authority—

(a) a system participant is declared as insolvent or is dissolved or wound up; or

(b) a liquidator or receiver or assignee (by whatever name called), whether provisional or otherwise, is appointed in a proceeding relating to insolvency or dissolution or winding up of a system participant,

then, notwithstanding anything contained in the Banking Regulation Act, 1949 or the Companies Act, 1956 or the Companies Act, 2013 or any other law for the time being in force, such order shall not affect any settlement that has become final and irrevocable prior to such order or immediately thereafter, and the right of the system provider to appropriate any collaterals contributed by the system participants towards its settlement or other obligations in accordance with the rules, regulations or bye-laws relating to such system provider.”;

10 of 1949.
1 of 1956.
18 of 2013.

(iii) after sub-section (4), the following sub-sections shall be inserted, namely:—

“(5) Where an order referred to in sub-section (4) is made with respect to a central counter party, then, notwithstanding such order or anything contained in the Banking Regulation Act, 1949 or the Companies Act, 1956 or the Companies Act, 2013 or any other law for the time being in force, the payment obligations and settlement instructions between the central counter party and the system participants including those arising from transactions admitted for settlement at a future date, shall be determined forthwith by such central counter party in accordance with the gross or netting procedure, as the case may be, approved by the Reserve Bank, while issuing authorisation or under any other provisions of this Act, and such determination shall be final and irrevocable.

10 of 1949.
1 of 1956.
18 of 2013.

(6) Notwithstanding anything contained in the Banking Regulation Act, 1949 or the Companies Act, 1956 or the Companies Act, 2013 or any other law for the time being in force, the liquidator or receiver or assignee (by whatever name called) of the central counter party, whether appointed as provisional or otherwise, shall—

10 of 1949.
1 of 1956.
18 of 2013.

(a) not re-open any determination that has become final and irrevocable;

(b) after appropriating in accordance with the rules, regulations or bye-laws of the central counter party, the collaterals provided by the system participants towards their settlement or other obligations, return the collaterals held in excess to the system participants concerned.”;

(iv) the existing *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1*, as so numbered, the following *Explanation* shall be inserted, namely:—

‘*Explanation 2.*—For the purposes of this section, the expression “central counter party” means a system provider who by way of novation interposes between system participants in the transactions admitted for settlement, thereby becoming the buyer to every seller and the seller to every buyer, for the purpose of effecting settlement of their transactions.’.

4. After section 23 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
23A.

‘23A. (1) The Reserve Bank may, in public interest or in the interest of the customers of designated payment systems or to prevent the affairs of such designated payment system from being conducted in a manner prejudicial to the interests of its customers, require system provider of such payment system to—

Protection of
funds collected
from customers.

(a) deposit and keep deposited in a separate account or accounts held in a scheduled commercial bank; or

(b) maintain liquid assets in such manner and form as it may specify from time to time,

of an amount equal to such percentage of the amounts collected by the system provider of designated payment system from its customers and remaining outstanding, as may be specified by the Reserve Bank from time to time:

Provided that the Reserve Bank may specify different percentages and the manner and forms for different categories of designated payment systems.

(2) The balance held in the account or accounts, referred to in sub-section (1), shall not be utilised for any purpose other than for discharging the liabilities arising on account of the usage of the payment service by the customers or for repaying to the customers or for such other purpose as may be specified by the Reserve Bank from time to time.

(3) Notwithstanding anything contained in the Banking Regulation Act, 1949 or the Companies Act, 1956 or the Companies Act, 2013 or any other law for the time being in force, the persons entitled to receive payment under sub-section (2) shall have a first and paramount charge on the balance held in that account and the liquidator or receiver or assignee (by whatever name called) of the system provider of the designated payment system or the scheduled commercial bank concerned, whether appointed as provisional or otherwise, shall not utilise the said balances for any other purposes until all such persons are paid in full or adequate provision is made therefor.

Explanation.—For the purposes of this section, the expressions—

(a) “designated payment system” shall mean a payment system or a class of payment system, as may be specified by the Reserve Bank from time to time, engaged in collection of funds from their customers for rendering payment service;

(b) “scheduled commercial bank” shall mean a “banking company”, “corresponding new bank”, “State Bank of India” and “subsidiary bank” as defined in section 5 of the Banking Regulation Act, 1949 and included in the Second Schedule to the Reserve Bank of India Act, 1934.’.

10 of 1949.
1 of 1956.
18 of 2013.

10 of 1949.
1 of 1934.

Insertion of
new section
34A.

Act to apply
to designated
trade
repository
and issuer.

5. After section 34 of the principal Act, the following section shall be inserted, namely:—

‘34A. (1) The provisions of this Act shall apply to, or in relation to, a designated trade repository or issuer, as they apply to, or in relation to, payment systems to the extent applicable, subject to the modification that, throughout this Act, unless the context otherwise requires,—

(a) references to a “payment system” or “system provider” shall be construed as references to a “designated trade repository” or “issuer”, as the case may be;

(b) references to “commencement of this Act” shall be construed with reference to—

(i) a designated trade repository, as references to the date on which a trade repository is specified by the Reserve Bank as a designated trade repository; and

(ii) an issuer, as references to commencement of the Payment and Settlement Systems (Amendment) Act, 2014.

(2) The Reserve Bank may, on an application by a designated trade repository or otherwise, permit or direct the designated trade repository to provide such other services as are deemed necessary from time to time.

Explanation.—For the purposes of this section, the expression “designated trade repository” shall mean a trade repository or a class of trade repositories, as may be specified by the Reserve Bank from time to time.’.

STATEMENT OF OBJECTS AND REASONS

The Payment and Settlement Systems Act, 2007 (the said Act) was enacted for the regulation and supervision of payment systems in India and to designate the Reserve Bank of India as the authority for that purpose and for matters connected therewith.

2. Subsequent to the enactment of the said Act, the country has witnessed orderly growth of payment systems, and these payments systems are granted authorisation on the principles of safety, security, soundness, efficiency and accessibility. After the global financial crisis in 2007-08, several developments took place, driven primarily by the G20, for reforming the Over the Counter derivatives markets. Some of these new initiatives include setting up of Trade Repositories and Legal Entity Identification System.

3. The Trade Repositories have emerged as a new type of Financial Market Infrastructure and are growing in importance, particularly in the Over the Counter derivatives market. However, there is no specific legal provision in any of the laws administered by the Reserve Bank of India to regulate and supervise the Trade Repositories in India. Therefore, compliance of the Trade Repositories with international norms needs to be ensured by the regulator through appropriate legal powers. In line with the G20 commitment and the global developments, the Reserve Bank of India has designated the Clearing Corporation of India Limited as a Trade Repository.

4. The global financial crisis in 2007-08 and the resultant difficulties experienced by banks and regulatory agencies to identify the complicated business ventures and to efficiently establish connections between issuers and securities brought forth the need for a standard uniform code to properly attribute Over the Counter derivatives activity to a party or group. Recognising the importance of a global identifier as a key component of necessary improvements in financial data systems, the G20 endorsed the development and maintenance of a global Legal Entity Identifier system. The Legal Entity Identifier is a 20-character unique identity code assigned to entities which are parties to a financial transaction and would be unique across the globe. Currently, there is no legal provision under any of the laws administered by the Reserve Bank of India for regulation and oversight of the Legal Entity Identifier issuer. The Reserve Bank of India has selected the Clearing Corporation of India Limited to act as a Local Operating Unit for issuing globally compatible Legal Entity Identifier in India. The use of the Legal Entity Identifier numbers is likely to be mandated for Over the Counter derivative transactions and large borrowers in a phased manner.

5. Given the markets being served by the Clearing Corporation of India Limited, the participating banks run significant exposures against the said Corporation, in its role as central counter party. Hence, it is necessary to provide a sound and enforceable legal basis for "netting" of banks exposures to said Corporation so that their exposure is reduced significantly. The said Act, though providing for netting protection and settlement finality in the event of insolvency or dissolution of system participants, does not expressly contemplate a situation which may warrant netting on account of insolvency or dissolution of the central counter party itself. The proposed amendments on enforceability of netting in the event of insolvency or dissolution of the system provider would provide finality to the determination of the payment obligations and settlement instructions between a central counter party and system participants in the event of insolvency, dissolution or winding up of a central counter party.

6. Further, there are some legal difficulties in securing the customers' interest held in escrowed accounts in the event of insolvency or bankruptcy of prepaid instruments, operators, which are required to be addressed.

7. The amendments to the said Act have been proposed to increase transparency and stability of Indian financial markets in line with globally accepted norms. The Payment and Settlement Systems (Amendment) Bill, 2014, *inter alia*, proposes:—

(a) to substitute sub-section (4) of section 23 of the said Act so as to provide that where by an order of the court, Tribunal or authority, the system participant is declared as insolvent or is dissolved or wound up, such order shall not affect any settlement that has become final and irrevocable prior to such order or immediately thereafter;

(b) to insert a new sub-section (5) in section 23 of the said Act so as to provide that where an order under sub-section (4) of section 23 is made with respect to a "central counter party", the payment obligations and settlement instructions between the central counter party and the system participants shall be determined by such central counter party in accordance with the gross or netting procedure, as the case may be, approved by the Reserve Bank of India;

(c) to insert a new sub-section (6) in section 23 of the said Act so as to provide that the liquidator or receiver of the central counter party shall not re-open the determination which has become final and irrevocable and after appropriating the collateral provided by system participants towards their settlement obligations, return the excess collaterals to system participants;

(d) to insert a new section 23A relating to "protection of funds collected from the customers by the payment system providers";

(e) to insert a new section 34A so as to apply the said Act to the designated trade repository and legal entity identifier issuer.

8. The Bill seeks to achieve the above objects.

NEW DELHI;
The 1st December, 2014.

ARUN JAITLEY

ANNEXURE

EXTRACT FROM THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007

(51 OF 2007)

* * * * *

23. (1) The payment obligations and settlement instructions among the system participants shall be determined in accordance with the gross or netting procedure, as the case may be, approved by the Reserve Bank while issuing authorisation to a payment system.

Settlement
and netting.

* * * * *

(4) Where a system participant is declared by a court of competent jurisdiction as insolvent or is dissolved or wound up, then notwithstanding anything contained in the Companies Act, 1956 or the Banking Regulation Act, 1949 or any other law for the time being in force, the order of adjudication or dissolution or winding up, as the case may be, shall not affect any settlement that has become final and irrevocable and the right of the system provider to appropriate any collaterals contributed by the system participant towards its settlement or other obligations in accordance with the rules, regulations or bye-laws of such system provider.

1 of 1956.
10 of 1949.

Explanation.—For the removal of doubts, it is hereby declared that the settlement, whether gross or net, referred to in this section is final and irrevocable as soon as the money, securities, foreign exchange or derivatives or other transactions payable as a result of such settlement is determined, whether or not such money, securities or foreign exchange or derivatives or other transactions is actually paid.

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ANOOP MISHRA,
Secretary-General.